IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 286

THE PROOF COMPANY, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MARTIN W. BELL
HENRY B. KEISER
Commonwealth Building
Washington 6, D. C.
Counsel for Petitioner

Of Counsel:

STERN, MILMET & ROSSIER
National Bank Building
Detroit 26, Michigan

SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting Writ	5
I. Re Question 1	5
A. The Court of Appeals Has Incorrectly Decided an Important Question of Federal Law Which Has Not Been, But Should Be Settled by This Court. The Question is of Extreme Importance to the Future Conduct of Labor Negotiations	5
B. The Decision of the Court of Appeals is in Direct Conflict With a Decision of the Court of Appeals for the Eighth Circuit	7
II. Re Question 2	8
A. The Court of Appeals Has Incorrectly Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court. The Question is of Exfreme Importance to the Future Conduct of Labor Negotiations	8
Conclusion	10
Appendix A: Opinion and Decree of the Court of Appeals for the Seventh Circuit	1a

TABLE OF CASES

Brooks v. N.L.R.B., 348 U.S. 96, 75 S. Ct. 176 (1954)	8, 9
N.L.R.B. v. Grace Co., 184 F. (2d) 126 (C.A. 8, 1950)	6
N.L.R.B. v. Nash-Finch Co., 211 F. (2d) 622 (C.A. 8, 1954)	7
Swift & Company, 94 N.L.R.B. 917	8
The Proof Company, 115 N.L.R.B. 53	3

STATUTES CITED

29 U.S.C. Sections:	
141(b)	9
158(a)(1)	2
158(a)(5)	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

THE PROOF COMPANY, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Proof Company, an Ohio corporation, prays that a writ of certiorari be issued to review the decree of the United States Court of Appeals for the Seventh Circuit entered on April 25, 1957.

OPINIONS BELOW

The opinion of the Court of Appeals is as yet unreported but is set forth in full in Appendix A to this petition, *infra*, p. 1a. That opinion granted the National Labor Relations Board's (hereinafter sometimes referred to as the Board) Petition for Enforce-

ment of an Order of the Board, which Order is printed on pp. 78-81 of the certified Transcript of Record filed with this petition. The Board's Order adopts the Intermediate Report and Recommended Order of its Trial Examiner, reprinted on pp. 51-73 of the Record.

JURISDICTION

The herein involved Decree Enforcing An Order Of The National Labor Relations Board was dated and entered by the Court of Appeals for the Seventh Circuit on April 25, 1957. No petition for rehearing was filed. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

1. Does good faith compliance with Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act require that an employer be permanently bound by "temporary" arrangements of convenience made with a bargaining agent during the course of negotiations?

2. Is the one year period of required recognition of a bargaining agent mandatory in the face of good evidence of loss of majority status together with incidents of physical violence arising therefrom?

STATUTES INVOLVED

The particular statutory provisions involved are the following portions of 29 U.S.C. Sec. 158:

> (a) It shall be an unfair labor practice for an employer:
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 157 of this title;
>
> * * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 159(a) of this title.

These provisions will hereinafter be referred to, respectively, as Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act.

STATEMENT OF THE CASE

This case arises out of a National Labor Relations Board hearing on alleged unfair labor practices and refusal to bargain by The Proof Company, Petitioner herein. The Board's Decision and Order (R. 78-81), 115 NLRB 53, issued on February 3, 1956, found that The Proof Company committed unfair labor practices, in violation of Section 8(a)(1) of the National Labor Relations Act, by unilaterally and without notice to the Union rescinding the preferential seniority temporarily granted to Union officials, and by likewise refusing to permit the Union to post notices on a plant bulletin board. The Board further found that The Proof Company refused to bargain with the certified bargaining agent in violation of Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act.

The Union involved herein, The International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, Local 943, was certified as bargaining agent as of June 28, 1954. Thereafter, bargaining conferences were held on July 12, 13, 21, August 9 and 19. During the course of these negotiations the Union presented a written temporary agreement. The company refused to sign this, but did agree that during negotiations the company would recognize preferential seniority for Union

officials and would allow the Union to use the plant bulletin board for notices (R. 29-30, 39)

The bargaining sessions were broken off on August 19 subject to further notice from either party. Shortly thereafter a petition for decertification of the bargaining unit was filed with the Board signed by approximately 163 of the company's employees. On or about September 10 the company had a lay-off of employees during the course of which the company failed to recognize the "super seniority" of Union officers and, further, the company locked the plant bulletin board which had been the scene of certain physical violence at the plant in regard to posting of notices by rival groups.

After the entry of the Board's Order on February 3, 1956, the Board subsequently filed a Petition for Enforcement in the United States Court of Appeals for the Seventh Circuit on July 24, 1956. The case was argued on December 14, 1956, and the Court's Opinion was rendered on March 27, 1957, deciding in favor of enforcement of the Board's Order. The Court of Appeals' Decree enforcing the Order was entered on April 25, 1957, but has been stayed, on petition of The Proof Company, until July 17, 1957 pending the filing of a petition for writ of certiorari herein.

This case involves interpretation of the National Labor Relations Act, as amended, particularly Sections 8(a)(1) and 8(a)(3) thereof, in proceedings arising under that Act. Federal jurisdiction is based upon those questions of interpretation.

REASONS FOR GRANTING WRIT

I

RE QUESTION 1: DOES GOOD FAITH COMPLIANCE WITH SECTIONS 8(a)(1) AND 8(a)(5) OF THE NATIONAL LABOR RELATIONS ACT REQUIRE THAT AN EMPLOYER BE PERMANENTLY BOUND BY "TEMPORARY" ARRANGEMENTS OF CONVENIENCE MADE WITH A BARGAINING AGENT DURING THE COURSE OF NEGOTIATIONS?

A. The Court of Appeals Has Incorrectly Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court. The Question is of Extreme Importance to the Future Conduct of Labor Negotiations

The Petitioner herein believes this question is of extreme importance because of the wide spread usage in labor management relations of the temporary verbal understanding. The use of such temporary understandings is extremely valuable in promoting the purposes of the National Labor Relations Act by avoiding industrial strife by the use of such temporary arrangements where no long term understanding or agreement is intended. As an example, it is common practice in labor negotiations for each side to agree to extend a current or expiring contract on a temporary basis while the parties strive for a permanent agreement. It would be unfortunate if, as a result of the reasoning of the Court of Appeals in this case, an employer or a union would be bound to continue negotiations interminably by reason of such a temporary understanding. In the present case, by reason of the employer having reached a verbal understanding with the union to recognize "super seniority" for union officers and to allow the union temporary use of a plant bulletin board during the course of negotiations, the employer is held to have engaged in an unfair labor practice when, after the breakdown of negotiations, the employer ceased to continue to

recognize these temporary arrangements of convenience. The effect of this holding, if sustained by this Honorable Court, will be that both employers and unions in the future will refuse any and all such temporary arrangements because they would be permanently bound by them.

To be sure, the Petitioner herein does not intend to include within the scope of this question any agreements reduced to writing and of even a semi-permanent nature. The National Labor Relations Board itself has long held that permanent type agreements are to be reduced to writing. *N.L.R.B.* v. *Grace Co.*, 184 F. (2d) 126 (CA 8, 1950). Any agreements reached between the employer and the union of a nature sufficient to be reduced to writing should be binding upon both parties for the duration of said agreement. Here, however, there was no understanding between the parties as to the duration of the temporary understanding.

It was of course anticipated in the beginning that the parties would eventually reach a written agreement covering all aspects of the employer employee relationship. When it became apparent that the parties were in such irreconcilable conflict as to the terms of such an agreement, then the Petitioner herein contends that it should no longer be bound by the prior temporary understanding. Indeed, it is clear from the record that the temporary understandings were giving rise to chaotic conditions within the plant because of the sharp division of opinion among the employees (R. 40).

Finally, the Petitioner strongly urges that if this Honorable Court does not condone the use of tem-

porary understandings between the parties without fear of permanency, the smooth flow of labor management relations will be seriously interfered with and the purposes of the National Labor Relations Act in avoiding industrial strife will be frustrated.

B. The Decision of the Court of Appeals is in Direct Conflict With a Decision of the Court of Appeals for the Eighth Circuit

The Petitioner herein believes that the present holding is in direct conflict with the case of *N.L.R.B.* v. *Nash-Finch Co.*, 211 F. (2d) 622 (C.A. 8, 1954), where the court held that withdrawal of an insurance and bonus plan unilaterally by an employer was not unlawful where the contract with the bargaining agent did not require the employer to maintain such a plan. It is the Petitioner's contention herein that upon the breakdown of negotiations on August 19, 1954, there was no longer even a verbal agreement with the bargaining agent covering the two items referred to above.

The Petitioner most strongly urges that this Honorable Court rule on the apparent conflict between the Circuit Courts of Appeal for the Seventh and Eighth Circuits on the question of whether the employer may unilaterally discontinue the benefits or working conditions which are not the subject of permanent agreements with the bargaining agent.

RE QUESTION 2: IS THE ONE YEAR PERIOD OF REQUIRED RECOGNITION OF A BARGAINING AGENT MANDATORY IN THE FACE OF GOOD EVIDENCE OF LOSS OF MAJORITY STATUS TOGETHER WITH INCIDENTS OF PHYSICAL VIOLENCE ARISING THEREFROM?

A. The Court of Appeals Has Incorrectly Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court. The Question is of Extreme Importance to the Future Conduct of Labor Negotiations

In presenting this question for review the Petitioner is not unmindful of the recent holding of this Honorable Court in *Brooks* v. *N.L.R.B.*, 348 U.S. 96, 75 S. Ct. 176. In that case it was held that informal repudiation of a bargaining agent by employees would not be sanctioned during the one year period where decertification by another election is precluded. A careful reading of the holding in that case, however, shows that this ruling only applies to the one year period, and if the employer has fair doubts about the union's continuing majority he may refuse to bargain further with it. In the present case the bargaining negotiations had reached an impasse (R. 49-50). Petitioner, as noted in part I, *supra*, believes that no unfair labor practices intervened to extend the one year period of required bargaining. Nevertheless, on April 25, 1957, almost three years after the bargaining agent's original certification date, Petitioner is ordered to resume bargaining with the certified union. It seems that thi holding is in conflict with *Swift and Company*, 94 NLRB 917, in which the Board itself ordered a new election where the schism within the union developed within seven months after the certification date of the bargaining agent, holding that inasmuch as the order itself did not enter until 17 months after the certification date, the one year rule was therefore complied with.

Petitioner further contends that the holding of this Honorable Court in *Brooks, supra*, was not intended to completely close the door on the "unusual circumstances" rule even within the one year period. This is acknowledged by the Board on page 6 of its brief filed before the Court of Appeals in this matter, wherein one of the propositions of law relied upon by the Board is stated as follows:

> I. *Absent unusual circumstances*, an employer is obligated to bargain with a certified union for a reasonable period of time, normally one year after the date of the certification. [Italics added.]

It would be indeed unfortunate if this Honorable Court were not to retain the authority to make certain exceptions to the one year rule where unusual circumstances are present, such as actual physical violence within the plant because of the extreme antagonism of many employees to the bargaining agent (R. 40). To require employees to be represented by a bargaining agent where their antipathy has reached the point of physical violence would seem to be in direct conflict with the expressed purposes of the National Labor Relations Act, which was set up to prevent "industrial strife which interferes with the normal flow of commerce," 29 U.S.C. Section 141(b).

We do not here contend that the unruly action of a small minority in a plant should be seized upon as justification for refusing to bargain with a certified bargaining agent. However, the record here shows that there was a petition filed with the Regional Office of the National Labor Relations Board signed by 103 employees of the company requesting decertification in early September of 1954 (R. 18 and 76). This num-

ber is compared to the total union membership of between 133 and 166 members (R. 47), and after two separate reductions in the number of employees by the company (R. 33). The Petitioner contends that the evidence of dissatisfaction with the bargaining agent shown by the signing of the decertification petition to the Board by 103 employees, together with actual instances of physical violence within the plant itself, gives rise to such unusual circumstances as to warrant an exception to the one year rule of required bargaining, and it is also such clear and convincing evidence to the employer as to raise reasonable doubts in the employer's mind of the union's continuing majority status.

CONCLUSION

For the foregoing reasons the petition for certiorari should be granted.

Respectfully submitted,

MARTIN W. BELL

HENRY B. KEISER
Commonwealth Building
Washington 6, D. C.
Counsel for Petitioner

Of Counsel:

STERN, MILMET & ROSSIER
National Bank Building
Detroit 26, Michigan